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BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of	:	
LABOR ASSOCIATION OF WISCONSIN, INC.	:	Case 18
To Initiate Arbitration Between	:	No. 43700 INT/ARB-5609
Said Petitioner and	:	Decision No. 26501-A
	:	
VILLAGE OF BUTLER	:	
	:	

Appearances:

Mr. Patrick J. Corraio, Representative, Labor Association of Wisconsin, Inc., on behalf of said labor organization.

Mr. Richard Ensslin, President, and Mr. Charles Erickson, Administrator, on behalf of the Village of Butler.

ARBITRATION AWARD

Following on election conducted by it, the Wisconsin Employment Relations Commission (WERC), on November 1, 1989, certified the Law Association of Wisconsin, Inc., hereinafter referred to as the Association, as the collective bargaining representative of all regular full-time and regular part-time employes employed in the Department of Public Works of the Village of Butler, hereinafter referred to as the Village, excluding supervisory, managerial and confidential employes. Thereafter, and prior to February 26, 1990, representatives of LAW and the Village exchanged proposals to be included in their initial collective bargaining agreement covering the wages, hours and working conditions of the three employes employed in the bargaining unit described above. Said employes occupy the classification of (1) Leadman/Mechanic/Laborer, (2) Meter Maintenance/Laborer, and (3) Laborer. Representatives of the parties

met on three occasions prior to February 26, 1990 in negotiations without reaching an accord, and on the latter date the Association filed a petition with the WERC requesting the latter agency to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. Thereafter, a staff member of the WERC met with the representatives of the parties on May 3 and 16, 1990 in mediation, however, the parties remained at impasse, and on the latter date the parties submitted their final offers on the issues remaining at impasse, as well as indicating proposals agreed upon during the course of their negotiations. Thereafter, and on May 30, 1990, the WERC certified that the conditions for the initiation of arbitration had been met; the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them; and in that regard the WERC submitted a panel of seven arbitrators from which to select a single arbitrator. After being advised by the parties of their selection, the WERC, on June 13, 1990, issued an Order appointing the undersigned as the Arbitrator to resolve said impasse and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on August 22, 1990 at the office of the Village, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was transcribed by a court reporter. During the course of the hearing the parties indicated that they desired to file briefs. The

transcript of the hearing was received by the Arbitrator on September 29, 1990. Both parties filed their briefs by November 30, 1990, and the Arbitrator, not having received any reply briefs, closed the record as of December 20, 1990.

Background

For a number of years prior to November 1989 the employees in the Village's Department of Public Works represented themselves in collective bargaining over wages, hours and conditions of employment with the Village, and as such, executed collective bargaining agreements with the representatives of the Village. The last of such agreements became effective January 1, 1988 and continued in full force and effect until December 31, 1988. Following such expiration the Village engaged in bargaining with the employees in an effort to reach an accord on a 1989 agreement. Such negotiations failed to produce an accord on a new agreement, and in July 1989, the Village unilaterally implemented its proposals relating to wage increases and health insurance premium contributions by the employees. The wage increases granted to the three employees occupying the departmental classifications were as follows:

<u>Classification and Occupant</u>	<u>1988 Rate</u>	<u>1989 Rate</u>	<u>% Increase</u>
Leadman/Mechanic/Laborer Charles M. Schaffer	\$11.01	\$11.45	4.0%
Meter Maintenance/Laborer Kenneth Podewils	10.21	11.18	6.4%
Laborer Ken Wunder	10.21	10.68	1.5%

The Village provided that the above 1989 increases were

retroactive to January 1, 1989, and further, that as of April 1, 1989 said three employes were required to contribute \$30.69 monthly, from April 1, 1989, to the premium cost of their health insurance coverage, and further the Village reduced sick leave earned by employes from one day to one-half day per month.

During the summer of 1989, the three employes attempted to initiate an interest arbitration proceeding before the WERC, however they were unsuccessful for procedural reasons, and thereupon the employes sought to be represented by LAW, which initiated an election proceeding before the WERC resulting in the representation election previously referred to herein.

Provisions Agreed Upon

Prior to the date of the hearing herein, and during the five meetings between their representatives, the Association and the Village reached an accord on various provisions to be included in their initial collective bargaining agreement. Said provisions relate to the following:

Preamble	Workday/Workweek	Special Clothing
Management Rights	Pay Period	Life and Dental Ins.
Fair Share	Call In and Overtime	Wis. Retirement Fund
Grievance Procedure	Holidays	Workers Compensation
Bargaining	Funeral Leave	No Strike Provision
Seniority	Sick Leave	Duration
Vacation Schedule	Jury Duty	

The parties have agreed that the duration of the agreement involved herein is for a term from November 1, 1989 through June 30, 1992.

Proposals In Issue

In its final offer, the Association proposes that the following

wage increases be granted to the three employes occupying the classifications noted, on the various dates noted:

	<u>11/1/89</u>		<u>1/1/90</u>		<u>1/1/91</u>		<u>1/1/92</u>	
	Rate	% Inc.	Rate	% Inc.	Rate	% Inc.	Rate	% Inc.
Leadman/Mech./ Laborer	\$11.45	0%	\$12.02	5%	\$12.62	5%	\$12.94	2.5%
Meter Maint./ Laborer	11.18	0%	11.74	5%	12.33	5%	12.64	2.5%
Laborer	11.00	3%	11.55	5%	12.13	5%	12.43	2.5%

With respect to the issue "health insurance" the Association proposes that the initial collective bargaining agreement contain the following provision:

"The Village shall maintain the existing health insurance coverage or its equivalent for all employees and their dependents, commencing the first day of the month following a thirty (30) day waiting period, the premium cost to be paid by the Village except for the following:

1. Effective 1/1/90 employees who elect and are eligible for a family plan shall contribute five dollars (\$5.00) per month, which amount shall be paid by payroll deduction.
2. Effective 1/1/91 employees who elect and are eligible for a family plan shall contribute ten dollars (\$10.00) per month, which amount shall be paid by payroll deduction."

The Village, in its final offer, proffers the following wage increases to be effective on the dates noted:

	<u>11/1/89</u>		<u>1/1/91</u>		<u>1/1/92</u>	
	Rate	% Inc.	Rate	% Inc.	Rate	% Inc.
Leadman/Mech./ Laborer	\$11.91	4.0%	\$12.39	4.0%	\$12.64	2.0%
Meter Maint./ Laborer	11.63	4.0%	12.10	4.0%	12.34	2.0%
Laborer	11.11	4.0%	11.55	4.0%	11.78	2.0%

The Village proposes the following language with regard to the

issue of health insurance premium contribution:

"Employee contribution of 10% of actual cost to the Village for the life of the agreement. The Village will also sign a letter of intent to aggressively pursue alternate insurance plans (i.e. such as the State of Wisconsin Group Insurance Plan) to afford the employees a more cost effective coverage. The Village's contribution for alternate plans would remain at 90%.

The Issue Before the Arbitrator

The Arbitrator must determine which of the final offers is more supported by the evidence adduced herein relating to the statutory criteria set forth in Sec. 111.70(4)(cm)7 of the Wisconsin Municipal Employment Relations Act, and therefore to be incorporated in the collective bargaining agreement between the Association and the Village.

The Statutory Criteria

Section 111.70(4)(cm)7 sets forth the following criteria to be considered by the Arbitrator in an interest arbitration proceeding:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interest and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
- f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration

proceedings with the wages, hours and conditions of employment of other employes in the private employment in the same community and in the same community and in comparable communities.

- g. The average consumer prices for goods and services, commonly known as the cost-of-living.
- h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment , and all other benefits received.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Position of the Association

The Association contends that, neither during the course of its negotiations with the Village, nor during the course of the hearing herein, was any issue raised with regard to the criterion relating to the lawful authority of the Village with respect to any subject matter involved in their initial agreement covering the employes in the Department of Public Works.

As indicated previously herein, during the course of their bargaining, the parties agreed upon a number of provisions which were to be incorporated in their agreement. The Association points out that there is no issue with regard to the incorporation of said provisions, and therefore no deliberation is necessary with regard to any stipulations involved.

The Association argues that its final offer best serves the interest and welfare of the public for the reason that it recognizes the need to maintain the morale of the employes, and that it influences them to remain in the employment of the Village, despite the Village's action in previously implementing, unilaterally, the determination that the employes pick up a share of the cost of health insurance premiums, which action, it is claimed demoralized the employes. The Association concludes that its final offer, if accepted by the Arbitrator, is the means by which "a better esprit de corps and morale will best serve the interest and welfare of the public."

The Association emphasizes that the Village Administrator, for the first time during the course of the hearing, claimed that the Village may experience difficulty in paying for the monetary benefits which would be required to be implemented resulting from the offer of the Association, if selected by the Arbitrator. The Association contends that at no time during the bargaining process, nor during the conduct of the investigation by the WERC staff member, did any representative of the Village ever indicate such a concern, and as a result, the Association urges the Arbitrator not to give any weight to said contention by the Village, and conclude that the Village does have the ability to meet the costs of the Association's offer.

With respect to the criteria provisions relating to comparable communities, the Association points out that the Village of Butler has a population of approximately 1,972, and that it encompasses an area of 1.5 square miles. While it is contiguous to the cities of

Milwaukee and Wauwatosa, the Association would exclude said cities from its proposed comparable grouping because of their large size and population. The Association urges the Arbitrator to consider the following nearby communities as being the more comparable to the Village:

<u>Community</u>	<u>Population</u>	<u>Community</u>	<u>Population</u>
City of Brookfield	33,324	Village of Hartland	6,208
Village of Menomonee Falls	27,045	Village of Elm Grove	6,233
Village of Pewaukee	9,238		

The Association contends that the comparable grouping proposed by the Village, consisting of over thirty communities was not based on any research or sound investigation by the Village as to wages, hours and conditions of employment, but that said communities were selected because they comprised the membership in the Milwaukee Area Municipalities Association. The Association also urges the Arbitrator not to consider the Village's proposed grouping for the reason that the Association did not rely upon said grouping during the course of negotiations prior to the hearing herein.

The Association argues that its comparables reveal that its offer is more reasonable than that of the Village, in light of the extent of the duties performed by the employees in the bargaining unit, contending that they essentially all engage in the tasks involved, including the operation of departmental equipment, despite the fact that their present wage rates are well below those paid to similar employees in the comparable communities.

In considering internal comparisons the Association claims that

the executive and supervisory personnel of the Village have been granted salary and wage increases over and above those proposed in either offer.

As to the amount to be contributed by an employe to the cost of health insurance premiums, the Association argues that its offer is more reasonable, in that it is closer to its comparables in that regard. Three of the communities pay 100% of the costs for single and family coverage, and in the fourth community, the choices given to the employes are either "no contribution", or at a cost less than would be required under the Association's offer.

The Association produced data from the Bureau of Labor statistics indicating that the nation's cost of living, from January 1, 1989 through December 31, 1989, increased by 5.2%, and that for the twelve month period preceding June 1990 the cost of living increased at the rate of 4.5%. It claims that its offer for the years 1990 and 1991 is more closely aligned to the rise in the cost of living than is the offer of the Village, especially since the latter requires unit employes to pay for a portion of their health insurance premiums, thus reducing their take home throughout the term of the collective bargaining agreement.

The Association further claims that the offer of the Village, as it pertains to employe contributions to health insurance premiums changes the previous status quo, wherein the Village picked up the entire cost of said premiums. The Association acknowledges that the statutory provisions relating to final and binding interest arbitration contain no specific reference to factors such as

bargaining history, past practices, or prior status quo. It contends that subsection (j) directs arbitral consideration to other factors "which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment, etc." In the opinion of the Association, the Arbitrator should reject the offer of the Village since it did not present sufficient evidence or argument to support a deviation from the alleged previous practice, citing in support thereof the decision of the US Supreme Court in NLRB vs. Katz (US, 1962).

The Position of the Village

The Village presents no specific arguments with regard to its lawful authority, or to the stipulations entered into during negotiations. Nor does it specifically address the interests and welfare of the public. It makes broad reference to the criterion relating to its ability to meet the costs which would be generated by either of the offers proposed by the parties herein. It focuses its position on its external and internal comparables. It argues that the five municipalities contended by the Association as the more comparable grouping should not be compared to the Village of Butler because of their large populations and the size of the geographical areas, plus the fact that their employes are greater in number than those involved in the instant proceeding. It further contends that said five municipalities do not necessarily employ individuals in the same job classifications occupied by Village employes, and further, that two of said communities have not reached current contract settlements.

The Village contends that the following communities comprise the more comparable grouping, with their populations indicated:

Milwaukee County - 900,000

Cities in Milwaukee County

Cudahy - 19,000	Oak Creek - 18,200
Franklin - 19,800	South Milwaukee - 20,000
Glendale - 14,000	St. Francis - 9,800
Greenfield - 16,600	Wauwatosa - 50,000
Milwaukee - 600,000	West Allis - 64,000

Villages in Milwaukee County

Brown Deer - 12,400	River Hills - 1,600
Fox Point - 7,200	Shorewood - 14,000
Greendale - 16,600	West Milwaukee - 3,500
Hales Corners - 7,000	Whitefish Bay - 14,000

Communities in Waukesha County

Brookfield - 35,000	Elm Grove - 6,400
Muskego - 15,300	Hartland - 6,600
New Berlin - 30,500	Menomonee Falls - 27,500
Waukesha - 51,000	Pewaukee - 5,000
	Sussex - 4,500

Kenosha County

City of Kenosha - 75,000

Racine County

Town of Mt. Pleasant - 28,000

Washington County

City of Hartford - 7,900
City of West Bend - 22,300

Ozaukee County

City of Mequon - 16,500
City of Pt. Washington - 9,000

The Village admits that the wages of employes in its Department of Public Works compare poorly with the wages of employes in the employ of the above communities in similar classifications. It urges that the Arbitrator primarily compare its department employes with its other employes employed by the Village, who have consistently received similar wage and benefit packages. In this regard the Village refers to its police personnel and to its non-represented

employees.

The Village argues that the Association's criticism of the offer of the Village, requiring a pick up of the portion of health insurance premium, is flawed, for the reason that the Association, as the collective bargaining representative of the police personnel of the Village, agreed to a similar offer for 1990, proffered by the Village during the course of their negotiations. The Village points out that the reason put forth by the Association during the course of this proceeding, to the effect that it agreed to accept such offer on behalf of the police was due to the fact that said uniformed employes had no other choice, since they could not proceed to final and binding interest arbitration, since the statute did not provide such a procedure to law enforcement personnel employed in a community having less than 2,500 population. The Village responds that the Association could have utilized mediation and/or fact finding in that situation. The Village indicates that it has made the identical offer in the instant matter as was accepted in the negotiations involving the police officers.

With respect to the cost of living criterion, the Village disputes the Association's utilization of the nation-wide rise in the cost of living. The Village opines that the more appropriate index applicable to the employes herein is the "Milwaukee" index, which reflects that the rise in the cost of living for the period described by the Association was 3.2% for both of said periods. The Village also urges the Arbitrator to consider the Village's total overall cost, which includes costs relating to dental and life insurance,

disability insurance, retirement benefits, social security payments and employe assistance benefits. It avers that, when combined with its offer on wages and health insurance, said combined costs constitute "a compensation package which exceeds the Milwaukee Consumer Price Index Percentage". The Village concludes its brief by stating that it is left with the need "to make conservative, but fair, decisions when wage and benefit packages are concerned".

Discussion

Lawful Authority of the Village

The Village, pursuant to statute, has the authority, in the exercise of its municipal function, to establish a Department of Public Works, as well as the authority to employ personnel to perform the functions and duties assigned to said department. The status of the Association as the collective bargaining representative of the employes in said department was established and certified by the WERC on November 1, 1989, following an election conducted by the latter agency, and therefore the Village is lawfully authorized to enter into a collective bargaining agreement with the Association, containing provisions applicable to the wages, hours and conditions of employment of said employes.

Stipulations of the Parties

During the course of negotiations on their initial collective bargaining agreement the parties have reached an accord on a significant number of provisions to be included in that agreement, as indicated previously herein.

The Interests and Welfare of the Public and the Financial Ability of the Village to Meet the Costs of Either Offer

The Arbitrator acknowledges the argument of the Association that the implementation of its offer, over that of the Village's offer, would improve the morale of the employees receiving same. An opposite result does not necessarily imply that any of the three employees in the bargaining unit would resign, or seek other employment. No evidence was adduced in that regard, nor to establish that any resident, supervisor, or any Village official ever voiced any dissatisfaction with the work performance of said employees. They appear to the Arbitrator to be competent and loyal employees.

The evidence indicated that the property tax rate in the Village for the year 1989 was the highest among the 37 municipalities and the 105 different taxing areas situated in Waukesha County. Said tax rate amounted to \$2,813 on a home having a fair market value of \$90,000.

The additional wage costs and health insurance premium costs to the Village which would be generated by each of the offers proposed herein are reflected in the following tabulations:

WAGES

<u>Association Offer</u>		<u>Village Offer</u>	
<u>Period</u>	<u>Cost</u>	<u>Period</u>	<u>Cost</u>
11/1/89-12/31/89	\$ 110.93	11/1/89-12/31/90	\$3,227.46
1/1/90-12/31/90	3,494.40	1/1/91-12/31/91	2,891.20
1/1/91-12/31/91	3,681.00	1/1/92-6/30/92	748.80
1/1/92-6/30/92	967.20		
TOTALS	\$8,254.13	TOTALS	\$6,867.46

HEALTH INSURANCE PREMIUMS

<u>Association Offer</u>		<u>Village Offer</u>	
<u>Period</u>	<u>Cost</u>	<u>Period</u>	<u>Cost</u>
1/1/90-12/31/09	\$11,056.24	1/1/90-12/31/90	\$10,111.68
1/1/91 -12/31/91*	11,998.00	1/1/91-12/31/91*	11,122.92
1/1/92-6/30/92*	<u>6,617.34</u>	1/1/92-6/30/92*	<u>6,117.84</u>
TOTALS	\$29,671.38	TOTALS	\$27,352.44

* The Village assumes that premium costs will rise 10% during said periods.

Thus it is apparent that under the Association's offer the wage increases and health insurance premium costs to the Village, during the thirty two month term of the collective bargaining agreement involved herein, would total \$37,925.51. The offer of the Village would generate wage and premium costs for the same period in the amount of \$34,219.90, or a difference of \$3,705.61 for the thirty two months of the labor agreement.

While the Village states that it has a "need to make conservation decisions when employe wage and benefit packages are concerned", the Arbitrator concludes that the Village has the ability to meet the costs generated by either of the offers.

The Appropriate External Comparable

The County has proposed that the appropriate external comparable grouping consists of over 30 communities situated in the southeastern sector of Wisconsin. Its proposed grouping is based on the fact that said communities are members of the Milwaukee Area Municipal Employers Association and have established employe wage increases for the year 1990. 31 of said communities maintain Laborer classifications, and 24 maintain Mechanic positions. Only four of

them have established rates for Meter/Maintenance positions. The Village also produced data relating to pay earned by other non-blue collar employes, including police, employed by those communities. Village exhibits also include a tabulation reflecting data relating to co-insurance and health insurance premium contributions by employes in 32 of the communities for the year 1990.

As indicated previously herein the Association proposed a comparable grouping consisting of 5 communities, all of which are included in the Village's proposed grouping. The group proposed by the Village includes 34 communities having populations ranging from 900,000 to 1,600, consisting of 1 county, 10 cities, and 3 villages located in Milwaukee County (including Milwaukee County); 5 cities and 5 villages located in Waukesha County; 1 city in Kenosha County; 2 cities in Ozaukee County; 2 cities in Washington County; and 1 township in Racine County. The grouping proposed by the Association consist of 1 city and 4 villages all situated in Waukesha County. Butler has population under 2,500 inhabitants, and is situated at the middle eastern border of Milwaukee County.

The undersigned cannot accept either of the proposed groupings as appropriate. The Village grouping would include communities of quite disparate size and location. While the Association's grouping consists of communities in Waukesha County, there is considerable disparity in their populations. The undersigned concludes that the more appropriate external comparable grouping consists of those communities in Waukesha and Milwaukee counties having a population of less than 10,000 inhabitants. West Milwaukee, which has a population

of 3,500, is not included, for no data was introduced during the course of the hearing with regard to any wage increases, if any, granted by West Milwaukee for the years 1990 and 1991. The grouping selected by the Arbitrator consists of the counties set forth below, as well as the percentage of increase in wages granted by each, the resulting hourly wage rates established and in effect for the year 1990 to employes occupying the classifications of Laborer and Mechanic, all as follows:

<u>Community</u>	<u>Percent of Increase</u>	<u>Laborer Rate</u>	<u>Mechanic Top Rate</u>
Elm Grove	4.10%	\$12.84	\$12.96
Fox Point	NA	12.97	15.87
Hales Corners	3.80%	12.87	14.22
Hartland	3.50%	12.59	12.59
Pewaukee	3.50%	11.84	NA
River Hills	NA	12.65	NA
St. Francis	3.50%	12.73	14.29
Sussex	NA	12.26	NA
	<u>5 Community Average</u>	<u>8 Community Average</u>	<u>5 Community Average</u>
	3.68%	\$12.59	\$13.99
Association Offer	5.0%	11.55	12.02*
Village Offer	4.0%	11.44	11.91*

NA - Data not available

* Village employe classified as Leadman/Mechanic/Laborer

No data was produced to reflect that any of the above communities employed Meter Maintenance classifications.

Only two of the above communities, namely Elm Grove and Hartland, have established 1991 wage increases for their department of public works employes, both at 4.0%. None of the communities, which either of the parties would include in their desired grouping, and for which

data was available, granted wage increases for the years 1990 and 1991 which exceeded 4.0%, except Elm Grove, which is included in the Arbitrator's comparable grouping, where employees were granted a 4.1% increase in 1990. Elm Grove and Hartland employees will receive an increase of 4% in 1991. Because of the lack of sufficient pertinent data relating to increases for the 1991 and 1992 years, the Arbitrator must primarily rely on the year 1990 in his determination as to the impact of the external comparisons.

One of the employees in the instant three employe bargaining unit performs duties in the classification of "Leadman/Mechanic/Laborer". Obviously, he does not spend all of his time as a Mechanic or as a Laborer, and there is no evidence that any of the communities in any of the three groupings of communities maintains the classification of Leadman/Mechanic/Laborer. Therefore the undersigned combines the known hourly rates of the Mechanic and the Laborer classifications to obtain a more realistic hourly rate for the Leadman/Mechanic/Laborer, resulting in an average hourly rate of \$13.29 per hour for the latter classification, some \$.70 per hour below the average rate paid to the Mechanic classification. It is apparent that the differences of the two offers as to the hourly rates discussed above is as follows for 1990:

	<u>Hourly Rate</u>	
	<u>Laborer</u>	<u>Leadman/Mechanic/Laborer</u>
Comparable Average	\$12.59	\$13.29
Association Offer	11.55	12.02
Village Offer	11.44	11.91

The percentage figure increase which would be generated by the offer of the Village is closer to the average percentage figure increase granted in 1990 by the villages included in the Arbitrator's comparable group. However, dollar wise, the Association's offer generates an hourly rate closer to the average hourly rate paid by said villages. The difference in the hourly rates between the two offers is \$.11 for both classifications. While the Association's offer generates a percentage wage rate closer to the comparable average, than does the offer of the Village, the Association's wage rate is \$1.04 and \$1.27 below the average for the two classifications noted.

It is significant to note that of the comparable communities proposed by the Village twenty three of them maintain the classifications of Laborer, and Mechanic, in their departments of public works. The average of their 1990 hourly rates for the Laborer is \$11.83 and \$13.65 for the Mechanic. The computed average hourly rate for the Leadman/Mechanic/Laborer comes to \$12.74. Thus, if the Village's comparable were to be accepted its Laborer and its Leadman/Mechanic/Laborer would receive hourly rates, under its offer, \$.39 and \$.83 below such averages, whereas under the Association's offer the two employees of the Village would receive \$.28 and \$.72 below the average rates paid to the occupants of such positions.

The Arbitrator is compelled to conclude that, in comparing the hourly rates paid to employees by the comparable communities with the hourly rates which would be generated by the offers herein, said comparables strongly favor the offer of the Association.

With respect to the Association's argument that the Arbitrator should reject the offer of the Village in changing the past practice of not requiring employes to pick up any of the health insurance premium costs in April 1989, without producing sufficient evidence to support its deviation from said practice, the Arbitrator points out that the Association reliance on the Supreme Court case previously identified herein is misplaced. In that proceeding the employer was charged with committing an unfair labor practice with respect to its duty to bargain in good faith with the bargaining representative. An Arbitrator in a final and binding interest arbitration proceeding does not have the jurisdiction to make such a determination, and no such contention expressed during the arbitration proceeding voids, or causes the Arbitrator to reject, the offer of the employer.

Prior to April 1, 1989 the Village paid 100% of the premium costs of health insurance provided its employes. On the latter date, all employes who had family coverage, with the exception of police employes, were required to pick up \$30.69 (11.5%) of the \$266.74 monthly premium cost. As of April 1, 1989 police officers commenced paying \$26.67 (10%) monthly toward the premium payment. On January 1, 1990 family premium costs rose to \$312.09. As of said date non-represented employes began contributing 5% of the monthly premium cost, while police officers continued to contribute 10%. The Village projects that premium costs will increase by 10% each year in 1991 and 1992. The Association's offer proposes that as of January, 1990 each employe would contribute \$5.00 per month toward the premium, and as of January 1, 1991 the contribution would be raised to \$10.00 per

month. The offer of the Village would require each employe to contribute 10% of the premium cost commencing on January 1, 1990, and continuing thereafter through the life of the collective bargaining agreement.

Evidence was adduced regarding the payment of health insurance premiums for the year 1990 in all but two of the communities deemed more comparable by the undersigned. The employers in Elm Grove and St. Francis pay 100% of the premium costs for both single and family coverage. Elm Grove offers three insurance plans, having monthly premium costs ranging from \$330.92 to \$348 for the family coverage. As of March 1990 the village of Pewaukee began paying \$300.00 per month toward the premium costs of the family coverage "for the lowest costing plan chosen by the Village and should an employe choose a higher costing plan, the employe is obligated to pay the additional costs".

The Villages of Fox Point, Hartland and River Hills have identical provisions with respect to the payment of health insurance premiums. Therein the employes are offered eight insurance plans, from which to choose one. The monthly premiums for said plans range from \$282.20 to \$369.87 for family coverage. Said villages pay up to 105% of the premium costs of the least expensive plan. No evidence was adduced as to the premium costs in 1990 for the Villages of Hales Corners and Sussex, nor was any evidence adduced with regard to the nature of the coverage of any of the health insurance plans in either the comparable communities, or in the Village of Butler.

The monthly premium costs to the employer of the three health

insurance plans available to employees in Elm Grove average \$296.31 (family coverage) for each employee. The monthly premium costs per employee to the Villages of Fox Point, Hartland and River Hills costs each of said employers no more than \$296.31 per month for the family plan, and at Pewaukee the monthly premium cost per employee is limited to \$300.00 for the family plan. No evidence was adduced with respect to the costs of the premiums paid by the Villages of Hales Corners and St. Francis, although said villages pay the full monthly premiums. The following tabulation reflects the comparison between the 1990 average monthly premium costs paid by the above villages, with the premium costs which would be incurred by the Village of Butler, generated by each of the offers herein:

Premium	Family Plan	
	Employer	Cost of Monthly
	<u>Per Employee</u>	
Five Community Average		\$303.47
Association Offer		307.09
Village Offer		288.88

It is clear that the Association's offer is closer to the average cost than is the offer of the Village.

Internal Comparisons

Pursuant to statute, a comparison must be made with other employees in the employ of the Village. It employs only one additional "blue collar" employee, who is classified as "Village Hall Cleaner". It also employs a Village Administrator, Police Chief, Public Works Supervisor, Deputy Treasurer, and a Deputy Clerk, and the non-supervisory police officers who are also represented for the purposes of collective bargaining by the Association. As noted

heretofore the Village and the Association reached an accord on the collective bargaining agreement for the 1990 year covering said officers, wherein the Association accepted the offer of the Village of a 4% wage increase and a 10% pick up of the health insurance premium costs. The non-represented employees for 1990 were granted a 4% wage increase and picked up 5% of the cost of insurance premiums.

The 4% wage increase granted by the Village to non-represented employees for 1990 favors the Village's offer. However, the impact thereof is somewhat tempered by the fact that the non-represented employees pick up only 5% of the costs of the health insurance premiums, as compared to the 10% pick up under the offer of the Village, by the employees in the Department of Public Works. The 10% pick up of the cost of the health insurance would reduce the percentage of their hourly take home pay increase in 1990 to 3.2%, while the take home pay percentage increase of the non-represented employees, because of their 5% pick up of the premium, reduces the non-represented employees' take home pay increase to 3.7%.

The settlement reached between the Association and the Village for the police officers on the wage increase and the employee pick up of the costs of the health insurance is identical to the offer of the Village, and thus appears to favor the Village's offer. However, it must be observed that the police officers and the Association had no choice other than to accept the package offered by the Village in their negotiations, for the reason that no final and binding impasse procedures are available to police personnel employed by a municipality having less than a 2,500 population, and, further

because the Wisconsin Municipal Employment Relations Act prohibits strikes by public employes. As for the internal comparable criterion, it is obvious to the Arbitrator that the non-represented employes received a take home pay increase in 1990 netting them a .5% increase over and above the increase to the police officers, and that the Village offer would accomplish the same result with respect to the employes in its Department of Public Works. While it may appear that the internal comparisons favor the offer of the Village, the circumstances relating to the police offer settlement and the smaller monthly health insurance premium contribution required to be paid by the non-represented employes, diminishes the impact of the internal comparison criterion.

The Cost of Living

The unrefuted evidence establishes that the cost of living in the Milwaukee area rose by 3.2% in the twelve month period from February 1989 through January 1990, and by 5.2% through out the United States. The Arbitrator concludes that the appropriate measure herein is the index established in the Milwaukee area, for obvious reasons.

The Arbitrator rejects the argument of the Village that the total of its employe benefits granted to the employes involved herein, along with the wage increase offered to said employes in its offer, be considered in comparing same with the cost of living. This Arbitrator accepts the rationale expressed by Arbitrator Jos. B. Kerkman in his interest arbitration award involving Brown County (Case 399, No. 42303) issued May 23, 1990, as follows:

"When considering the cost of living criteria, it is the opinion of this Arbitrator that it should be compared to

the percentage wage increases and not to the cost of the package. It is the wage increase which insulates employes against the erosion of the dollar caused by inflation, the cost to the Employer does not."

The 1990 take home pay of the employes involved herein would, under the offer of the Village, increase by 3.2%, which is identical to the rise in the Milwaukee cost of living increase, while under the offer of the Association, their take home pay would increase by 3.7%. The cost of living criterion slightly favors the offer of the Village.

No evidence was adduced by either party pertaining to private employment comparisons, nor did either party prior to the close of the hearing, claim any change in circumstances during the course of this proceeding. Further no material evidence with regard to factors, other than those discussed herein, was presented by either party during the course of the instant proceeding.

Conclusion

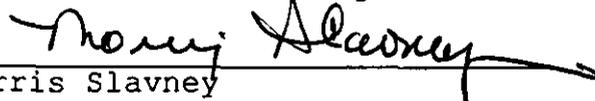
Having considered the offers of the parties, the statutory criteria, the evidence relating thereto, and the arguments and briefs of the parties, the Arbitrator concludes that the criterion relating to the comparable external communities, especially the evidence establishing the considerable differences between the hourly wage rates paid to employes occupying similar classifications in the employ of said comparable communities, with the hourly rates which would be established by the offer of the Village, and as well as the differences in the amount of health insurance costs assumed by the employes of said comparable communities, compared to such costs to be assumed by Village employes pursuant to the offer of the Village,

outweighs the impact of the evidence adduced herein with respect to the cost of living and internal comparisons criteria, especially where under the offer of the Village the unit employes would be required to absorb health insurance premium costs twice as great as is required to be paid by the non-represented employes. Therefore the Arbitrator makes and issues the following:

Award

The final offer of the Association is deemed to be the more supported by the evidence relating to the statutory criteria set forth in Sec. 111.70(4)(cm)7 of the Municipal Employment Relations Act, and therefore the terms thereof shall be incorporated in the collective bargaining agreement between the parties, effective from November 1, 1989 through June 30, 1992, which shall also include the provisions previously agreed upon by the parties during their negotiations on said agreement.

Dated at Madison, Wisconsin this 28th day of December, 1990.



Morris Slavney
Arbitrator